

## **Subchapter X – Professional misconduct.**

### **PI 34.094 Definitions.** In this subchapter:

- (1) “Applicant” means a person who applies for or seeks to renew a credential from the state superintendent.
- (2) “Application” means a request for issuance of a credential from the state superintendent.
- (3) “Complainant” means a school administrator who has filed a report under s. 115.31 (3), Stats., or a person contacting the department with allegations of immoral conduct or incompetence by an applicant or the holder of a credential.
- (4) “Credential” means a license, permit, or certificate issued by the state superintendent.
- (5) “Grooming” means engaging in behavior to lower a pupil’s or minor’s inhibitions for emotional, physical, or sexual abuse.
- (6) “Immoral conduct” has the meaning given in s. 115.31 (1) (c), Stats.
- (7) “Incompetence” or “incompetent” means a pattern of inadequate performance of duties or the lack of ability, legal qualifications or fitness to discharge required duties, and which endangers the health, welfare, safety or education of any pupil.
- (8) “Office of legal services” means the office of legal services in the department.
- (9) “Reinstatement” means restoring all of the rights and privileges associated with a credential.
- (10) “Revoke” means to terminate all of the rights and privileges associated with a credential.
- (11) “Reprimand” means a written declaration that a credential holder’s conduct was improper.
- (12) “Suspend” means to completely withdraw and withhold all rights and privileges conferred by a credential for a period of time.

### **PI 34.095 Investigations.**

- (1) INITIATING. The state superintendent may investigate a credential holder on his or her own initiative or if any of the following occur:
  - (a) The state superintendent receives a report from a school administrator under s. 115.31 (3), Stats.
  - (b) The state superintendent receives credible information that a credential holder may have engaged in immoral conduct or was incompetent.
- (2) NOTICE. If the state superintendent determines that an investigation should be conducted under sub. (1), the state superintendent shall notify the complainant, if any, and the credential holder that an investigation is proceeding. The notice to the credential holder shall contain all of the following:
  - (a) The nature of the allegation or complaint.
  - (b) How the credential holder may respond to allegation or complaint.
- (3) CLOSING INVESTIGATIONS. If the state superintendent conducts an investigation and determines that no action is required under ss. PI 34.098, 34.099, or 34.100, the state superintendent shall promptly close the investigation and notify the credential holder and the complainant, if any, that the investigation is closed.
- (4) CONFIDENTIALITY. Except as provided under s. 115.31 (6) (b), Stats., the state superintendent shall maintain as confidential all files, communications, and other information pertaining to an open investigation.

### **PI 34.096 Denials.**

- (1) WHEN ISSUED.
  - (a) The state superintendent shall deny an application as provided under ss. 118.19 (1m), (1r), and (4), Stats.
  - (b) The state superintendent shall deny an application if the applicant has not met the requirements for a credential under this chapter or s. 118.19, 118.191, 118.192, 118.193, or 118.194, Stats.
  - (c) The state superintendent may deny an application if any of the following occur:
    1. The applicant engaged in immoral conduct or incompetence.
    2. The applicant’s credential issued by another jurisdiction was revoked or suspended by the other jurisdiction.
    3. The applicant provided false, inaccurate, or incomplete information on an application.
    4. The applicant engaged in conduct that endangered the health, welfare, education, or safety of any pupil.
    5. The applicant fails to respond to the department’s request for additional information within 30 days of the date of the request without having obtained an extension from the state superintendent for additional time to respond.
- (2) ORDER. An order issued under sub. (1) shall contain all of the following:
  - (a) The legal and factual basis for denying the application.
  - (b) What appeal rights the applicant has under s. PI 34.102.

**PI 34.097 Mitigating and aggravating factors.**

- (1) **APPLICABILITY.** Except as otherwise provided in this subchapter, the state superintendent shall base decisions on the type and duration of action under s. PI 34.098 through PI 34.100 using factors under sub. (2) and (3).
- (2) **AGGRAVATING FACTORS.** The following factors may inform more significant action by the state superintendent:
- (a) The misconduct involved a pupil.
  - (b) The misconduct harmed a pupil.
  - (c) The misconduct occurred at school or during a school activity.
  - (d) The misconduct was severe or occurred multiple times.
  - (e) The misconduct was criminal in nature.
  - (f) The misconduct was sexual in nature.
  - (g) The victim was vulnerable based on such factors as the victim's age, maturity, position, or disability status.
  - (h) The misconduct harmed the school district, community, or integrity of the profession.
  - (i) The credential holder engaged in prior misconduct.
  - (j) The credential holder attempted to conceal the misconduct.
  - (k) Other similar, relevant factors.
- (3) **MITIGATING FACTORS.** The following factors may inform action by the state superintendent:
- (a) The credential holder has not engaged in prior misconduct.
  - (b) The misconduct was not severe.
  - (c) The misconduct did not harm a pupil, the community, or the integrity of the profession.
  - (d) The misconduct was unintentional.
  - (e) The credential holder promptly reported the misconduct on his or her own initiative to the employing school or the department.
  - (f) The credential holder fully cooperated with the department's investigation.
  - (g) The credential holder has taken relevant, effective steps to address or mitigate the underlying behavior, such as participating in counseling, obtaining treatment, or obtaining ethics training.
  - (h) Other, similar relevant factors.

**PI 34.098 Reprimands**

- (1) **WHEN ISSUED.** The state superintendent may issue a reprimand to a credential holder if all of the following apply:
- (a) The credential holder engaged in immoral conduct or is incompetent.
  - (b) The credential holder's continued practice or employment will not endanger the health, welfare, education, or safety of any pupil.
  - (c) The credential holder has not been previously reprimanded or had a credential suspended or revoked by the state superintendent for similar misconduct.
- (2) **CONTENT OF REPRIMAND.** A reprimand issued under sub. (1) shall contain all of the following:
- (a) A description of the credential holder's misconduct and why it was improper.
  - (b) What appeal rights the credential holder has under s. PI 34.102.

**PI 34.099 Suspensions.**

- (1) **WHEN ISSUED.** The state superintendent may suspend any credential if any of the following apply:
- (a) The credential holder committed immoral conduct or was incompetent.
  - (b) The credential holder has a credential suspended in another state or jurisdiction.
- (2) **NOTICE.** The state superintendent shall provide written notice to the credential holder if the state superintendent intends to suspend the credential holder's credential. The notice shall contain all of the following:
- (a) The legal and factual basis for which the state superintendent intends to suspend the credential.
  - (b) The intended duration of the suspension.
  - (c) What early reinstatement conditions, if any, the credential holder may meet.
  - (d) What appeal rights the credential holder has under s. PI 34.102.
- (3) **DURATION OF SUSPENSIONS.**
- (a) It is a rebuttable presumption that the following types of immoral conduct shall result in a 5 year suspension:
    - 1. Theft of school district property if the value of the property exceeds \$500 but does not exceed \$1,000.
    - 2. Theft of a pupil's property if the value of the property exceeds \$250 but does not exceed \$500.
  - (b) It is a rebuttable presumption that the following types of immoral conduct shall result in a 3 year suspension:
    - 1. Theft of school district property if the value of the property exceeds \$250 but does not exceed \$500.
    - 2. Theft of a pupil's property if the value of the property does not exceed \$250.

3. Violating mandatory reporting requirements under s. 48.981, Stats.
- (c) It is a rebuttable presumption that the following types of immoral conduct shall result in a 1 year suspension:
1. Theft of school district property if the value of the property does not exceed \$250.
  2. Obstructing an investigation under s. PI 34.095.
- (d) A credential suspended under sub. (1) (b) shall be suspended until the credential holder's credential in the other state or jurisdiction is in good standing.

#### **PI 34.100 Revocation.**

##### **(1) WHEN ISSUED.**

- (a) The state superintendent may revoke a credential if any of the following apply:
1. The credential holder engaged in immoral conduct or is incompetent.
  2. The credential holder had a credential revoked in another state or jurisdiction.
  3. The credential holder has a driving education license and any of the following occur:
    - a. The credential holder has more than 6 demerit points or a major violation charged by the department of transportation or the equivalent charged by an authority in another jurisdiction within a 12 month period.
    - b. The credential holder is convicted of operating a motor vehicle while intoxicated or a similar crime in this state or another jurisdiction.
    - c. The credential holder's driving license is suspended or revoked by the department of transportation or by another jurisdiction.
- (b) The state superintendent shall revoke a credential as provided under ss. 115.31 (2g), 115.31 (6m), and 115.315, Stats.
- (c) It is a rebuttable presumption that the following types of immoral conduct shall result in a revocation::
1. Sexual abuse, sexual contact, attempted sexual contact, or grooming of a pupil or minor.
  2. Physically abusing a pupil.
  3. Soliciting a prostitute or attempting to solicit a prostitute while at school, while at a school sponsored activity, or by using school district resources.
  4. Theft of school district property if the value of the property exceeds \$1,000.
  5. Theft of pupil property if the value of the property exceeds \$500.
  6. Downloading, viewing, soliciting, seeking, displaying, or distributing pornographic material while at school or by using school district resources.
  7. Providing alcohol or an illegal substance to a pupil.
  8. Consuming, purchasing, distributing, or possessing an illegal substance while on school district property or at a school sponsored activity.
- (2) NOTICE. The state superintendent shall provide written notice to the credential holder if the state superintendent intends to revoke the person's credential. The notice shall contain all of the following:
- (a) The legal and factual basis for revoking the credential.
- (b) What early reinstatement conditions, if any, the credential holder may meet.
- (c) Notice of the credential holder's right to a hearing prior to revocation under s. PI 34.102.

#### **PI 34.101 Reinstatement.**

- (1) REQUEST. An individual whose credential was revoked may file a written request for reinstatement with the state superintendent. The request shall include evidence that the individual meets all of the standards under sub. (2).
- (2) STANDARD FOR REINSTATEMENT. The state superintendent may grant a request under sub. (1) if all of the following apply:
- (a) The requestor demonstrates that the cause of the revocation no longer exists.
- (b) The requestor demonstrates that reinstatement will not endanger the health, welfare, safety, or education of any pupil.
- (c) If the credential was revoked under s. 115.31 (2g), Stats., the requestor meets the requirements of s. 115.31 (2r), Stats.
- (d) At least 5 years have elapsed since the date the credential was revoked or surrendered or the credential holder has satisfied early reinstatement conditions, if any.
- (3) ORDER. The state superintendent shall issue a decision within 60 days of receiving a request under sub. (1). The decision shall contain all of the following:
- (a) The legal and factual basis for granting or denying the request.
- (b) The requestor's appeal rights under s. PI 34.102.

### **PI 34.102 Requesting a hearing.**

(1) REQUESTING A HEARING. Except as provided in ss. 115.31 (2g), 115.31 (6m), and 118.19 (4) (a), Stats., a person adversely affected by an action of the state superintendent under this subchapter may request a contested case hearing on that action conducted pursuant to subch. III of ch. 227, Stats. A request for a contested case hearing shall be filed with the office of legal services within 30 days of the state superintendent's action.

**Note:** A request for a contested case hearing may be filed with the office of legal services at the following address: 125 South Webster St., PO Box 7841, Madison, WI 53707-7841.

(2) CONTENTS OF REQUEST. A request for a contested case hearing under sub. (1) shall be in writing and shall describe all of the following:

- (a) The appellant's name and address.
- (b) The state superintendent's action on which a hearing is requested.
- (c) The specific ground for the hearing request, including each of the specific material facts or legal issues that are in dispute.
- (d) If the appellant asserts that a mistake of fact was made, the appellant shall include a concise statement of the essential facts which the appellant intends to prove at the hearing.
- (e) If the appellant asserts that a mistake of law was made, the appellant shall include a statement of the law upon which the person relies.
- (f) Any affirmative defense the appellant intends to assert.

(3) GRANTING OR DENYING REQUEST. The state superintendent shall grant or deny a request for a contested case hearing under sub. (2) within 20 days after a request is filed, unless the appellant agrees to an extension of time. The state superintendent shall grant a request for a contested case hearing if, upon preliminary review, it appears that all of the following apply:

- (a) The state superintendent has jurisdiction over the matter.
- (b) The request for a hearing complies with the requirements under subs. (1) and (2).
- (c) The appellant is entitled to a hearing under s. 227.42, Stats.

### **PI 34.103 Conduct of hearings.**

(1) ADMINISTRATIVE LAW JUDGE. Upon granting a hearing request under s. PI.34.102 (3), the state superintendent shall appoint an administrative law judge from the department of administration's division of hearings and appeals to preside over the hearing.

(2) HEARING.

- (a) The administrative law judge shall schedule a hearing no later than 90 days after the request for a hearing, unless the parties agree to an extension.
- (b) All hearings shall be held at the offices of the department in Madison unless the administrative law judge determines that the health or safety of a witness or of a party or an emergency requires that the hearing be held elsewhere.
- (c) Upon the conclusion of the hearing, the administrative law judge may permit the parties to provide closing arguments either verbally or in writing.

(3) PROPOSED DECISION. Within 60 days of the hearing, the administrative law judge shall issue a proposed decision. The parties may file written objections to the proposed decision within 20 days of the date of the proposed decision.

(4) FINAL DECISION AND ORDER. The state superintendent shall issue a final decision and order within 60 days after receiving a proposed decision under sub. (3).

(5) TRANSCRIPT.

- (a) Upon filing a written request with the department, any party in a contested case hearing may obtain a written transcript of the hearing. Except as provided in par. (b), the department shall charge the requesting party the actual cost to produce the transcript.
- (b) The department may provide a written transcript free of charge to a requesting party if the requesting party demonstrates, to the department's satisfaction, that the requesting party is indigent and has a legal need for the transcript.

### **PI 34.104 Public notification.**

(1) WEBSITE. The state superintendent shall post on the department's website all of the following:

- (a) The name of any credential holder being investigated under s. PI 34.095 and the date the investigation began.
- (b) A copy of any final decision and order issued under this subchapter.

(2) NASDTEC. The state superintendent shall notify the National Association of State Directors of Teaching Education and Certification of any final decision and order issued under this subchapter.